
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 11, 2001

TO: ALL PARTIES OF RECORD IN INVESTIGATION 01-12-010

Investigation 01-12-010 is being mailed without the Dissent of Commissioner Duque. The Dissent will be mailed separately.

Very truly yours,

/s/ LYNN T. CAREW (by ANG)

Lynn T. Carew, Chief
Administrative Law Judge

LTC:sid

Mailed 12/11/2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the actions of Pacific Gas and Electric Company, and its officers and employees for non-compliance with a Commission Decision.

FILED
PUBLIC UTILITIES COMMISSION
DECEMBER 11, 2001
SAN FRANCISCO OFFICE
INVESTIGATION 01-12-010

**ORDER INSTITUTING INVESTIGATION AND ORDER TO SHOW CAUSE
DIRECTED TO PACIFIC GAS AND ELECTRIC COMPANY,
ITS OFFICERS AND EMPLOYEES FOR FAILURE TO COMPLY
WITH DECISION 01-10-059**

Summary

In Decision (D.) 01-10-059, the Commission ordered Pacific Gas and Electric Company (PG&E) to tender its Notice of Intent for Test Year (TY) 2003 General Rate Case (GRC) with the Commission on November 14, 2001. PG&E failed to comply with D.01-10-059, and did not inform the Commission that it could not meet the November 14 deadline until after the close of business on that date. This Order Instituting Investigation (OII), and the accompanying Order to Show Cause (OSC), is being opened into the actions of PG&E and its officers and employees to determine whether they failed to comply with D.01-10-059, whether they should be held in contempt, and whether they should be subject to the penalties provided for in the Public Utilities Code. The hearing on this OSC shall be held beginning on December 19, 2001, at 10:00 a.m., and shall continue thereafter as determined by the assigned administrative law judge (ALJ).

Background

PG&E was originally directed in D.00-02-046, PG&E's TY 1999 GRC decision, to file a GRC for TY 2002 in accordance with the Rate Case Plan.¹ The Rate Case Plan schedule calls for the filing of the Notice of Intent in summer 2000, the GRC application in the fall of 2000, litigation of the GRC in 2001, and the issuance of the TY 2002 GRC decision in late 2001 to become effective January 1, 2002.

On April 27, 2000, a Commissioners' ruling issued seeking comment on the scope and timing of PG&E's TY 2002 GRC. Following the receipt of comments, the Commission in D.00-07-050 modified the TY 2002 schedule adopted in D.00-02-046 by delaying the schedule by nine months. The revised schedule called for PG&E to tender its NOI on May 1, 2001 and its application in August 2001.

PG&E filed a petition for modification of D.00-07-050 on January 25, 2001. The petition requests that PG&E be excused from tendering its NOI on May 1, 2001. PG&E's petition proposed that it be directed to file an alternative to the current schedule or an alternative to the GRC itself.

PG&E also requested on January 25, 2001 that the Commission's Executive Director authorize a day-for-day extension of the time to tender the NOI. On February 4, 2001, the Executive Director responded to this request by approving a limited extension of time to August 2, 2001 that would only become effective if the Commission did not act on PG&E's petition for modification of D.00-07-050 prior to May 1, 2001. The Executive Director denied PG&E's request for an

¹ The Rate Case Plan is contained in D.89-01-040.

extension of time that would take effect only if the Commission acts upon and denies the petition, stating that approval of such an extension should be reserved to the Commission.

On March 5, 2001, PG&E filed a motion requesting that the Commission extend the date by which PG&E must tender the NOI for TY 2002. PG&E requested that the NOI tender date be extended by the number of days from the filing date of the motion to the date that the Commission issues a final decision that is no longer subject to appeal, on the pending petition for modification of D.00-07-050. In D.01-03-052, the Commission addressed PG&E's motion. The Commission decided that until it had an opportunity to consider PG&E's petition for modification of D.00-07-050 and to adopt a firm plan for PG&E's TY 2002 GRC, that a limited extension of time for PG&E's tendering of the NOI was justified and prudent. The Commission therefore approved a limited extension of the NOI tender date to 30 days after the decision on the petition for modification is issued.

In D.01-10-059, the Commission addressed PG&E's January 25, 2001 petition to modify D.00-07-050. Instead of having PG&E initiate a TY 2002 GRC, the Commission ordered PG&E to tender its NOI for TY 2003 no later than 20 days from the effective date of D.01-10-059, with the goal of expediting hearings to have new rates in place by January 1, 2003. Since the effective date of D.01-10-059 was October 25, 2001, PG&E's NOI was to be tendered on November 14, 2001.

PG&E failed to tender its NOI to the Commission by the close of business on November 14, 2001. At approximately 7:12 p.m., on November 14, 2001, a letter from PG&E's President and Chief Executive Officer, Gordon R. Smith, was

transmitted by facsimile machine to the Commissioners. The letter states in pertinent part:

“The Commission will appreciate, however, that it is simply impossible to prepare a fully developed NOI compliant 2003 GRC showing in only twenty days. The preparation of a NOI typically takes a minimum of six months. This time is necessary to perform the analyses of recorded cost data, prepare costs forecasts for the test year, draft testimony and assemble workpapers. There is no way PG&E can prepare such a showing which meets the Commission’s specific requirements for an NOI in twenty days, especially in light of the Commission’s desire, expressed in its decision in PG&E’s last GRC, for ‘greater precision in our information and estimates, brought forward in a less cumbersome, burdensome and voluminous manner.’ [citation omitted.] Regretably [sic], it is therefore impossible for us to meet the filing requirement specified in the October 25 order.

“Further, we agree with the Commission that it is no longer appropriate to focus on test year 2002 for several reasons. Not the least of these is that PG&E has filed a Plan of Reorganization to emerge from Chapter 11 bankruptcy proceedings. Respecting the fact that the Commission may have objections to the Plan, it is nonetheless true that the resolution of the of Plan of Reorganization may have some effect on the structure of the utility company, beginning as early as 2003. It seems incongruous and an inefficient use of resources to process a full-blown General Rate Case without knowing how the bankruptcy will be resolved.

“Our specific request is that the Commission meet and confer with PG&E, and other parties, to develop a practical and efficient solution which is consistent with the Commission’s other pending cases, as well as its need and right to review our costs. In the course of that discussion the Commission may determine how it wishes to return to a rate case plan for all of the utilities.

“For these reasons, we will file a Petition for Modification of the Commission’s October 25 order this week, requesting that the Commission waive and modify the November 14, 2001,

deadline in that order and instead schedule a workshop among all interested parties and the Commission's Energy Division for the purpose of determining the most appropriate way to achieve the Commission's objective of re-establishing a cost-review process consistent with other realities."

On November 16, 2001, PG&E filed a petition to modify D.01-10-059² and an application for rehearing of D.01-10-059. Neither of these two pleadings requested that the November 14, 2001 date for tendering the NOI or that the schedule for PG&E's TY 2003 GRC be extended. The petition for modification acknowledged at page 2 that "PG&E had virtually completed the preparation of a 2002 GRC NOI when Decision 01-10-059 ordered PG&E to prepare a new 2003 test year case." PG&E also asserted at page 4 that "to prepare a new 2003 test year NOI would require PG&E basically to begin the entire process over again for the new test year; it cannot simply 'update' the extensive work it did on the 2002 case."

OII and Scope of Proceeding

Based on good cause as shown in the background section above, and as described below, this OII shall be opened to investigate the actions of PG&E and its officers and employees for their compliance with D.01-10-059 and to determine whether the Commission should pursue appropriate sanctions and penalties against PG&E and its officers and employees.

The OSC shall issue to determine whether PG&E and its officers and employees failed to comply with D.01-10-059 in violation of Public Utilities Code

² Attached to PG&E's petition for modification was the Declaration of Bruce T. Smith, the Manager of the GRC Section with PG&E's Revenue Requirement Department.

Sections 702 and 2109, and whether PG&E, its officers and employees should be held in contempt pursuant to Public Utilities Code Section 2113.

Public Utilities Code Section 702 provides as follows:

“Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.”

Public Utilities Code Section 2109 provides:

“In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility.”

Public Utilities Code Section 2113 provides:

“Every public utility corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.”

PG&E and its officers and employees failed to comply with Ordering Paragraph 2 of D.01-10-059 by failing to tender the NOI for TY 2003 with the Commission by close of business on November 14, 2001. PG&E did not seek to timely modify, stay or extend the NOI tender date. It wasn't until after the close of business on November 14, 2001 that PG&E transmitted a letter to the

Commissioners notifying the Commission that it could not meet the NOI tender requirement.

PG&E and its officers and employees responsible for failing to comply with D.01-10-059 shall be made respondents to this OII and the related OSC.

This OII and the OSC shall also determine whether PG&E and its officers and employees should be subject to the penalties provided for in Public Utilities Code Sections 2107, 2108, and 2113. Public Utilities Code Section 2107 provides for a penalty of not less than \$500, nor more than \$20,000 for each offense. Public Utilities Code Section 2108 provides that:

“Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”

Public Utilities Code Section 2113 provides that the Commission may punish for contempt “in the same manner and to the same extent as contempt is punished by courts of record.”

In assessing any appropriate penalties, the Commission will also consider whether PG&E should be directed to notify its shareholders of any violation of the Public Utilities Code and of the non-tax deductibility of any penalties that may be imposed.

PG&E is directed to file with the Commission on or before December 14, 2001 a list of all PG&E officers and employees who decided that PG&E would not tender its NOI for TY 2003 on November 14, 2001.

The hearing on the OSC will be held starting on December 19, 2001, at 10:00 a.m., at the State Office Building, 505 Van Ness Avenue, San Francisco. The

hearing shall continue as directed by the ALJ. PG&E and its responsible officers and employees shall be prepared on those dates and time to show cause whether or not PG&E and its officers and employees failed to comply with D.01-10-059, whether or not they should be held in contempt, and whether or not they should be subject to the penalties available to the Commission. Commission staff is directed to appear at the OSC to cross-examine PG&E's witnesses, as necessary. Other interested persons may participate in this OII as provided for in Rule 54 of the Commission's Rules of Practice and Procedure.

Preliminary Scoping Memo

Rule 6(c)(1) of the Commission's Rules of Practice and Procedure provides that an OII and OSC "shall determine the category and need for hearing, and shall attach a preliminary scoping memo." This OII and the related OSC are determined to be adjudicatory, as that term is defined in Rule 5(b). Any person who objects to the categorization of this proceeding may appeal the categorization pursuant to Rule 6.4.

Consistent with the adjudicatory categorization of this proceeding, there will be a formal hearing on the OII and related OSC involving adjudicative facts.³ That hearing will take place starting on December 19, 2002 as described above. Consistent with Rule 6.2, the assigned Commissioner may set a prehearing conference in advance of the formal hearing through the issuance of an assigned Commissioner's ruling.

A copy of this OII and OSC shall be served on PG&E, and its attorney.

³ Adjudicative facts are defined in Rule 8(f)(3) as facts which "answer questions such as who did what, where, when, how, why, with what motive or intent."

Consistent with Rule 6(e), we expect that this proceeding will be concluded within 12 months.

Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 7(a)(3) and 7(b), ex parte communications are prohibited.

Therefore, **IT IS ORDERED** that:

1. For good cause shown, an Order Instituting Investigation (OII) and a related Order To Show Cause (OSC) are instituted on the Commission's own motion to determine whether Pacific Gas and Electric Company (PG&E) and its officers and employees failed to comply with ordering paragraph 2 of Decision 01-10-059. In addition, the OII and OSC shall determine whether PG&E and the responsible officers and employees should be held in contempt, and whether they should be subject to the penalties provided for in the Public Utilities Code.
2. PG&E and its officers and employees responsible for deciding that PG&E would not tender its Notice of Intent for Test Year 2003 on November 14, 2001, shall be made respondents to this OII and related OSC and shall appear on December 19, 2001, at 10:00 a.m., and thereafter as specified by the assigned administrative law judge until the hearing is concluded, at the State Office Building, 505 Van Ness Avenue, San Francisco, to show cause whether or not PG&E and its officers and employees failed to comply with D.01-10-059, whether or not PG&E and its officers and employees should be held in contempt of this Commission, and whether or not PG&E and its officers and employees should be subject to the penalties provided for in the Public Utilities Code.

3. The Executive Director shall cause this OII and related OSC to be served on PG&E and its attorney, and on the service list in Application (A.) 97-12-020, Investigation (I.) 97-11-026, A.94-12-005, and I.95-02-015.

4. On or before December 14, 2001, PG&E is directed to file and serve with the Commission a list of all its officers and employees who decided that PG&E would not tender its Notice of Intent for Test Year 2003 with the Commission on November 14, 2001.

5. Commission staff shall appear at the hearing on the OSC to cross-examine PG&E's witnesses, as necessary.

6. The category of this OII and related OSC is determined to be adjudicatory.

7. Any person who objects to the categorization of this OII and related OSC shall file an appeal pursuant to Rule 6.4 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner